

**Before the
Federal Communications Commission
Washington, D.C. 20554**

CERTIFIED MAIL # 7001 2510 0007 6500 1018
RETURN RECEIPT REQUESTED

In the Matter of)	
)	
Robert A. Spiry)	File Number: EB-02-ST-045
1516 S. 52nd Street)	NAL/Acct. No. 200332980002
Tacoma, WA 98408)	FRN 0007-9392-18
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 30, 2002

By the Enforcement Bureau, Seattle Field Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Robert A. Spiry apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act")¹ by operating a radio station without Commission authorization. We conclude, pursuant to Section 503(b) of the Act,² that Mr. Spiry is apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On February 27, 2002, the FCC Seattle Office received a letter of complaint of neighborhood wide interference to home entertainment equipment around the 1500 block of S. 52nd Street, Tacoma, Washington. On March 13, 2002, at approximately 6:35 p.m. local time, a Seattle Office agent, using mobile direction finding ("DF") equipment, determined that the interference signal was a transmitter station operating on the Citizen Band ("CB") frequency 27.025 MHz at the residence of Mr. Robert Spiry at 1516 S. 52nd Street, Tacoma, Washington. The Agent observed signal levels that appeared to be significantly higher than those expected from a legal CB transmitter.

3. Between March 4, 2002 and March 25, 2002, the Seattle Field Office received 10 faxed complaints of interference to home electronic equipment from Mr. Spiry's CB radio station. On April 2, 2002, at approximately 5:30 p.m. local time, agents from the Seattle Office observed radio transmissions on 27.025 MHz in the CB band with signal levels that appeared to be significantly higher than those expected from a legal CB transmitter. Using mobile DF equipment, the Seattle Office agents positively located the signals emanating from Mr. Spiry's residence. After locating the signal source, on April 2, 2002 at approximately 7:11 p.m. local time, assisted by two Tacoma Police Officers, the Seattle Office agents requested an inspection of Mr. Spiry's CB station. After a significant delay at the door and then more delay once inside, the inspection was allowed. The agents determined that Mr. Spiry had been operating an unauthorized CB type radio power amplifier (linear), a Dutchman Special, model 4-400 and a non-FCC certified Malaysian manufactured RCI model 2980 transmitter. The agents informed

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

Mr. Spiry that he was operating an illegal unlicensed station and that his use of unauthorized equipment voided his authority to operate the CB station. A Notice of Unlicensed Operation was issued to, and signed for by, Mr. Spiry.

4. On April 25, 2002, after receiving several more complaints of interference from the neighbors, the Seattle Office imposed restricted hours on Mr. Spiry's CB operations.

5. On June 6, 2002, at approximately 6:00 p.m., Seattle agents conducted a scheduled inspection of Mr. Spiry's radio station while monitoring the neighbor's home electronics. The CB radio equipment provided by Mr. Spiry for the inspection was determined to operate within the CB Rules and caused no interference to the neighbor's electronics. Mr. Spiry was informed that his CB station was legal and not causing any interference to the neighbors. He was further advised that if interference recurred, the agents would assume he was operating non-FCC type accepted radio equipment.

6. During the period from June 17, 2002 to October 12, 2002, the FCC Seattle Office received 15 more complaints about periodic interference from Mr. Spiry's CB station. On October 29, 2002 at approximately 7:00 p.m. local time, agents from the Seattle Office positively located and monitored Mr. Spiry transmitting on 27.165 MHz in the CB band, from his mobile station, a 1983 Chevy Van -WA license 903 KTZ, as he was leaving his home and driving east on 52nd Street in Tacoma. The signal levels were significantly higher than those expected from a legal CB radio transmission.

7. On November 5, 2002 at approximately 6:45 p.m. local time, Seattle Office agents positively located and monitored Mr. Spiry operating on the CB frequency 27.165 MHz from his mobile station, a 1983 Chevy Van -WA license 903 KTZ, as he was leaving the Park and Ride lot near Alaska and S. 56th Street and followed him to his home at 1516 S. 52nd Street in Tacoma. The signal levels were significantly higher than those expected from a legal CB transmitter. Shortly after the monitoring and assisted by two Tacoma Police officers, the Seattle agents visited Mr. Spiry's residence and requested an inspection of Mr. Spiry's 1983 Chevy van (WA license -903 KTZ). Mr. Spiry opened the van side door and admitted that he had been operating an external radio frequency power amplifier, a Big Dawg 1000 watt model-600, with a Galaxy DX99 transceiver. Neither units have any FCC certification, and thus are unauthorized for use the CB radio Service. Mr. Spiry was advised that operating with unauthorized equipment voids the blanket CB license and he was issued a second Notice of Unlicensed Operation.

III. DISCUSSION

8. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license or fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁴

9. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with this Act and with a license granted under the provisions of this Act. The Rules governing the

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

licensing and operation of CB radio stations are set forth under Subpart D of Part 95 of the Rules.⁵ Section 95.409 of the Rules states that a CB operator must use an FCC certified CB transmitter and that use of a non-certified transmitter voids authority to operate the CB station. Section 95.410 of the Rules specifies that the CB station transmitter power output must not exceed 4 watts. Section 95.411 of the Rules prohibits attaching a power amplifier to a CB transmitter in any way. Furthermore, pursuant to Section 95.411(c) of the Rules, there is a presumption that a linear or other external RF power amplifier has been used if it is found in the possession of, or on the premises of, the CB radio station and there is other evidence that the CB station was operated with more power than allowed by the Rules. Section 95.411(b) reiterates that there are no exceptions to the rule against using a power amplifier and that use of a power amplifier voids authority to operate the station.

10. Based on the evidence before us, we find that Mr. Spiry willfully and repeatedly violated Section 301 of the Act by operating a station without a proper license. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"),⁶ and Section 1.80 of the Rules,⁷ for operating an unlicensed radio station is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁸ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Mr. Robert A. Spiry, is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Communications Act of 1934, as amended.⁹

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Mr. Spiry SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number ("FRN") and the NAL/Acct. Number referenced in the caption.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554, Ref: EB-02-ST-045; and must include the NAL/Acct. No. referenced in the caption.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and

⁵ 47 C.F.R. § 95.401 *et seq.*

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. §§ 301 and 503(b); 47 C.F.R. §§ 0.111, 0.311 and 1.80.

objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 2510 0007 6500 1018, Return Receipt Requested to Mr. Robert A. Spiry, 1516 S. 52nd Street, Tacoma, WA 98408

FEDERAL COMMUNICATIONS COMMISSION

Dennis Anderson
District Director, Seattle Office

¹⁰ See 47 C.F.R. § 1.1914.